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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,679	12/28/2001	Shmuel Shaffer	062891.0615	4598
5073	7590	06/02/2006	EXAMINER	
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			MURPHY, RHONDA L	
			ART UNIT	PAPER NUMBER
			2616	

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/035,679	<b>Applicant(s)</b> SHAFFER ET AL.	
	<b>Examiner</b> Rhonda Murphy	<b>Art Unit</b> 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 44 and 45 is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-22, 24-36 and 38-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/8/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 3 – 7, 10, 12, 13, 15, 17 – 21, 24, 26, 27, 29, 31 – 35, 38, 40 and 41 are rejected under 35 U.S.C. 102(e) as being anticipated by Bilder (US 6,400,804).

**Regarding claims 1 and 15**, Bilder teaches a method for providing on-hold content in a packet-switched network (Fig. 6, col. 9, lines 33-44), comprising: receiving an indication of a call on-hold (col. 4, lines 50-56); and selecting on-hold content for the call based on revenue generation criteria (col. 4, lines 24-37; viewing or reading advertisements).

**Regarding claims 3 and 17**, Bilder teaches receiving profile information for the call on-hold (col. 8, lines 30-51); and selecting the on-hold content for the call based on the revenue generation criteria and the profile information (col. 8, lines 37-49; col. 10, lines 5-15).

**Regarding claims 4 and 18**, Bilder teaches the profile information comprising information interactively obtained from an on-hold party to the call (col. 8, lines 37-51).

**Regarding claims 5 and 19**, Bilder teaches the profile information comprising calling party information (col. 8, lines 37-40).

**Regarding claims 6 and 20**, Bilder teaches the profile information comprising called party information (col. 7, lines 25-29).

**Regarding claims 7 and 21**, Bilder teaches the profile information comprising estimated on-hold time (col. 9, lines 51-62).

**Regarding claims 10 and 24**, Bilder teaches the on-hold content at least substantially comprises advertising (col. 4, lines 30-31).

**Regarding claims 12 and 26**, Bilder teaches delivering the on-hold content (col. 4, lines 50-65; col. 5, lines 28-30).

**Regarding claims 13 and 27**, Bilder teaches the on-hold content delivered in an audio file format (col. 24-37).

**Regarding claim 29**, Bilder teaches a system for providing on-hold content in a packet-switched network (Fig. 6, col. 9, lines 33-44), comprising: logic encoded in media (col. 10, lines 16-28); and the logic operable to receive an indication of a call on-hold (col. 4, lines 50-56) and to select on-hold content for the call on-hold based on revenue generation criteria (col. 4, lines 24-37; viewing or reading advertisements).

**Regarding claim 31**, Bilder teaches logic for performing the same limitation as described in the rejection of claim 3.

**Regarding claim 32**, Bilder teaches logic for performing the same limitation as described in the rejection of claim 4.

**Regarding claim 33**, Bilder teaches logic for performing the same limitation as described in the rejection of claim 5.

**Regarding claim 34**, Bilder teaches logic for performing the same limitation as described in the rejection of claim 6.

**Regarding claim 35**, Bilder teaches logic for performing the same limitation as described in the rejection of claim 7.

**Regarding claim 38**, Bilder teaches logic for performing the same limitation as described in the rejection of claim 10.

**Regarding claim 40**, Bilder teaches logic for performing the same limitation as described in the rejection of claim 12.

**Regarding claim 41**, Bilder teaches logic for performing the same limitation as described in the rejection of claim 13.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2, 16 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bilder (US 6,400,804) in view of Paluszek et al. (US 2004/0128192).

**Regarding claims 2 and 16**, Bilder teaches providing the on-hold content to the call on-hold (col. 4, lines 50-65; col. 5, lines 28-30). Although it is known in the art that advertisements generate revenue, Bilder fails to explicitly disclose generating revenue by providing the on-hold content to the call on-hold.

However, Paluszek teaches generating revenue by providing the on-hold content to the call on-hold (page 1, paragraph 12 and page 2, paragraph 23; a source of revenue since the time is sold to the advertiser).

In view of this, it would have been obvious to one skilled in the art to modify Bilder's method to generate revenue, in order for the advertisers to receive a profit from the content supplied to the callers on hold.

**Regarding claim 30**, Bilder teaches logic for performing the same limitation as described in the rejection of claim 2.

3. Claims 14 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bilder (US 6,400,804).

**Regarding claims 14 and 28**, Bilder teaches on-hold content delivered in audio, prerecorded messages and from the Internet (col. 4, lines 24-37). It is known in the art that these delivery options can include the transmission of voice content in Voice extensible Markup Language (VXML). However, Bilder fails to explicitly disclose on-hold content delivered in VXML format.

Examiner takes official notice that it would have been obvious to one skilled in the art to modify Bilder's method by including VXML, for the purpose of transmitting voice content through the web and telephone systems.

**Regarding claim 42**, Bilder teaches logic for performing the same limitation as described in the rejection of claim 14.

4. Claims 8, 11, 22, 25, 36, 39 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bilder (US 6,400,804) in view of Brown et al. (US 2003/0112927).

**Regarding claims 8 and 22**, Bilder teaches selecting on-hold content for the call on-hold based on the revenue generation criteria (col. 4, lines 24-37; viewing or reading advertisements). Bilder fails to explicitly disclose auctioning airtime of the call on-hold and selecting on-hold content of a highest bidder at the auction.

However, Brown teaches auctioning airtime of the call on-hold and selecting on-hold content of a highest bidder at the auction (page 13, paragraphs 181 and 185).

In view of this, it would have been obvious to one skilled in the art to modify Bilder's method by auctioning airtime to the highest bidder, in order to grant airtime to the highest paying advertiser.

**Regarding claims 11 and 25**, Bilder teaches selecting the on-hold content for the call on-hold (col. 4, lines 24-37; viewing or reading advertisements). Bilder fails to explicitly disclose selecting on-hold content from one of a plurality of providers with a pre-existing arrangement to pay for providing on-hold content to calls on-hold.

However, Brown teaches selecting on-hold content from one of a plurality of providers with a pre-existing arrangement to pay for providing on-hold content to calls on-hold (page 13, paragraphs 182-183; advertising database).

In view of this, it would have been obvious to one skilled in the art to modify Bilder's method by selecting content from a plurality of providers with a pre-existing arrangement, for the purpose of retrieving and delivering stored content with minimal delay.

**Regarding claim 36**, Bilder teaches logic for performing the same limitation as described in the rejection of claim 8.

**Regarding claim 39**, Bilder teaches logic for performing the same limitation as described in the rejection of claim 11.

**Regarding claim 43**, Bilder teaches receiving an indication of a call on-hold (col. 4, lines 50-56); receiving profile information for the call on-hold (col. 8, lines 30-51); selecting on-hold content for the call on-hold based on the call profile and revenue generation criteria (col. 8, lines 37-49; col. 10, lines 5-15); providing the on-hold content to the call (col. 4, lines 50-65; col. 5, lines 28-30); and generating an on-hold record for the call (col. 7, lines 25-29).

Bilder fails to explicitly disclose billing a provider of the on-hold content for provisioning of the content to the call on-hold based on an amount of time in which the call was on-hold.

However, Brown teaches billing a provider of the on-hold content for provisioning of the content to the call on-hold based on an amount of time in which the call was on-hold (page 12, paragraph 180).

In view of this, it would have been obvious to one skilled in the art to modify Bilder's method by billing a provider based on the hold time, for the purpose of billing the advertiser for the amount of time the caller was on-hold.

***Allowable Subject Matter***

5. Claims 44 and 45 are allowed.



**Regarding claim 44**, prior art fails to particularly disclose providing profile information to one or more service providers to bid to provide on-hold content to calls of the community placed on hold and auctioning a right to provide on-hold content to calls of the community placed on hold.

**Regarding claim 45**, prior art fails to particularly disclose criteria specifying a type of community the content provider is interested in providing content for calls on hold; selecting a community selling a right to provide content to its calls on hold based on the criteria and selling to the content provider the right to provide the on-hold content.

6. Claims 9, 23 and 37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Regarding claims 9, 23 and 37**, prior art fails to particularly disclose auctioning airtime of the call on-hold comprising posting availability of the call on an Internet site along with profile information about the call and receiving bids for providing the on-hold content.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

\*Himmel et al. (US 2002/0146106).

\*Rodriguez et al. (US 2003/0161464).

\*Kaufman et al. (US 2001/0012335).

\*Kusumoto et al. (US 2005/0216346).

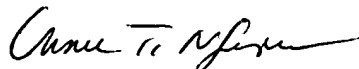
\*Billingsley (US 2005/0246228).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rhonda Murphy whose telephone number is (571) 272-3185. The examiner can normally be reached on Monday - Friday 8:00 - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen can be reached on (571) 272-3126. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Rhonda Murphy  
Examiner  
Art Unit 2616



RM

**CHAU NGUYEN**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2600**